

## § 563e.28

the OTS will consider the savings association eligible for an “outstanding” performance rating.

(4) *Election if satisfactory goals not substantially met.* A savings association may elect in its plan that, if the savings association fails to meet substantially its plan goals for a satisfactory rating, the OTS will evaluate the savings association’s performance under the lending, investment, and service tests, the community development test, or the small savings association performance standards, as appropriate.

(g) *Plan approval—(1) Timing.* The OTS will act upon a plan within 60 calendar days after the OTS receives the complete plan and other material required under paragraph (e) of this section. If the OTS fails to act within this time period, the plan shall be deemed approved unless the OTS extends the review period for good cause.

(2) *Public participation.* In evaluating the plan’s goals, the OTS considers the public’s involvement in formulating the plan, written public comment on the plan, and any response by the savings association to public comment on the plan.

(3) *Criteria for evaluating plan.* The OTS evaluates a plan’s measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the savings association’s qualified investments; and

(iii) The availability and effectiveness of the savings association’s systems for delivering retail banking services and the extent and innovativeness of the savings association’s community development services.

(h) *Plan amendment.* During the term of a plan, a savings association may request the OTS to approve an amendment to the plan on grounds that there has been a material change in cir-

## 12 CFR Ch. V (1–1–11 Edition)

cumstances. The savings association shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The OTS approves the goals and assesses performance under a plan as provided for in Appendix A of this part.

[60 FR 22216, May 4, 1995, as amended at 60 FR 66050, Dec. 20, 1995; 69 FR 41188, July 8, 2004]

## § 563e.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the OTS assigns to a savings association a rating of “outstanding,” “satisfactory,” “needs to improve,” or “substantial noncompliance” based on the savings association’s performance under the lending, investment and service tests, the community development test, the small savings association performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The OTS assigns a rating for a savings association assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A savings association that receives an “outstanding” rating on the lending test receives an assigned rating of at least “satisfactory”;

(2) A savings association that receives an “outstanding” rating on both the service test and the investment test and a rating of at least “high satisfactory” on the lending test receives an assigned rating of “outstanding”; and

(3) No savings association may receive an assigned rating of “satisfactory” or higher unless it receives a rating of at least “low satisfactory” on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The OTS’s evaluation of a savings association’s CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the savings association or in any assessment area by any affiliate whose loans have been considered as part of the savings association’s lending performance. In connection with any type of lending activity described

in § 563e.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

- (i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;
- (ii) Violations of the Home Owner-ship and Equity Protection Act;
- (iii) Violations of section 5 of the Federal Trade Commission Act;
- (iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and
- (v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the savings association's assigned rating, the OTS considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the savings association (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the savings association (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

[60 FR 22213, May 4, 1995, as amended at 70 FR 10030, Mar. 2, 2005; 72 FR 13435, Mar. 22, 2007; 72 FR 19110, Apr. 17, 2007]

#### § 563e.29 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the OTS takes into account the record of performance under the CRA of each applicant savings association, and for applications under section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)), of each proposed subsidiary savings association, in considering an application for:

- (1) The establishment of a domestic branch or other facility that would be authorized to take deposits;
- (2) The relocation of the main office or a branch;
- (3) The merger or consolidation with or the acquisition of the assets or assumption of the liabilities of an insured depository institution requiring OTS approval under the Bank Merger Act (12 U.S.C. 1828(c));

(4) A Federal thrift charter; and

(5) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* An applicant for a Federal thrift charter shall submit with its application a description of how it will meet its CRA objectives. The OTS takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The OTS takes into account any views expressed by interested parties that are submitted in accordance with the applicable comment procedures in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A savings association's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term "insured depository institution" has the meaning given to that term in 12 U.S.C. 1813.

### Subpart C—Records, Reporting, and Disclosure Requirements

SOURCE: 60 FR 22217, May 4, 1995, unless otherwise noted.

#### § 563e.41 Assessment area delineation.

(a) *In general.* A savings association shall delineate one or more assessment areas within which the OTS evaluates the savings association's record of helping to meet the credit needs of its community. The OTS does not evaluate the savings association's delineation of its assessment area(s) as a separate performance criterion, but the OTS reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose savings associations.* The assessment area(s) for a wholesale or limited purpose savings association must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one